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July 17, 2014

VIA ECF

United States District Judge Vernon S. Broderick
United States District Courthouse
Southern District of New York
40 Foley Square
New York, New York 10007

RE: RAPILLO v. FINGERHUT, HOLZER et al.
Docket No.: 09-CV-10429(VSB)
Our File No.: 17-7394

Dear Hon. Justice Broderick:

This is to advise you of the dealings of the undersigned counsel with the office of the District Attorney. As per authorization of the court, we met with the District Attorney to discuss the issues of the Fingerhut Holzer Fund Incorporated in the Cayman Islands. We met with Mr. ADA Corey Jacobs and ADA Judy Weinstock who listened to the presentation of both counsel and were asked for assistance in the determining of any activity on the Fingerhut Holzer Funds in the Cayman Islands.

We were advised to contact the district attorneys in a conference call two days prior to our next appearance date in your court scheduled for June 12, 2014. On June 10th in the conference call, we were advised by Mr. Jacobs that the investigation had not been completed and that we should call back on the following day, June 11th. On that day, the District Attorney's Office was contacted. They indicated to us that they had not yet completed their investigation and we should contact them next week. As a result, the court conference call was adjourned until June 26, 2014. Messages were left with both Assistant District Attorneys on their telephone. They have not yet responded to us. Additional telephone calls have not been responded to.

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As a result, counsel for the plaintiff requests that a deposition be ordered of David Holzer and Barry Fingerhut relative to the issue of all off-shore accounts including the Fingerhut Holzer Fund which is presently before the court. The issue for the plaintiff is that Mr. Holzer may have secreted funds not in compliance with the terms of his plea and not in compliance with the terms of his probation. Mr. Holzer is under the control of the Department of Probation of the State of New York. He will be obligated to comply with an inquiry. It is agreed by counsel that any deposition of Barry Fingerhut will be taken by telephone.

Counsel for the defendant has inquired whether an amendment to the pleading to include cross-claims against Holzer including but not limited to a Racketeer Influenced and Corrupt Organization Act count will be permitted by the court. Plaintiff is reviewing this request.

The matter still awaits a motion by counsel for the defendant for dismissal. This is the present state of our matter. Please advise of the intentions of the court.

Respectfully submitted,



Robert J. Conway (RC- 2373)

RJC:nr

cc: **Via E-Mail**
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